

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

CYBOENERGY, INC.,

Plaintiff,

v.

NORTHERN ELECTRIC POWER  
TECHNOLOGY, INC.,

Defendant.

Case No. [21-cv-08534-SI](#)

**ORDER MOOTING PENDING  
MOTION TO DISMISS**

Re: Dkt. No. 24

On April 11, 2022, defendant Northern Electric Power Technology, Inc. filed a motion to dismiss the patent infringement complaint filed by plaintiff CyboEnergy, Inc. Dkt. No. 24. Twenty eight days later, on May 9, 2022, CyboEnergy filed an opposition along with an Amended Complaint withdrawing its claims for pre-filing indirect and willful infringement. Dkt. Nos. 33 (opposition), 32 (amended complaint). Defendant correctly notes the Amended Complaint is untimely under Fed. R. Civ. P. 15(a). Dkt. No. 34.

Although plaintiff filed after the 21 days permitted by Rule 15, the Court will excuse the timeliness issue in the interest of judicial economy and therefore consider the Amended Complaint properly filed. The motion to dismiss is therefore **MOOT**. Defendants may file a renewed motion to dismiss no later than June 24, 2022 and may rely on the same moving papers as the original motion to whatever extent it wishes. The hearing currently scheduled for June 24, 22 is **VACATED**.

**IT IS SO ORDERED.**

Dated: June 9, 2022



SUSAN ILLSTON  
United States District Judge